

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-134729-09

Date: November 18, 2009

Legend

Parent =

Subsidiary1 =

Subsidiary2 =

LLC =

Bank =

Business A =

Series A Preferred Stock =

Series B Preferred Stock =

Series C Preferred Stock =

Series D Preferred Stock =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

m =

n =

o =

z =

Trust =

X =

Dear :

This letter responds to your July 24, 2009, request for rulings on certain federal income tax consequences of a proposed transaction. Additional information was submitted on July 27, August 6, September 11, October 22, and October 27, 2009. The information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that has elected to file a consolidated federal income tax return (Parent Consolidated Group). The Parent Consolidated Group is engaged in Business A. Subsidiary1 and Subsidiary2 are direct wholly owned subsidiaries of Parent. Subsidiary1 currently owns approximately z percent of Parent. Parent also owns all of the common interests in LLC (Common Units), which are the only outstanding equity interests in LLC. LLC is currently disregarded as an entity separate from Parent for federal income tax purposes.

On Date 1, Bank, as lender, and Parent, as borrower, entered into a credit agreement. Bank made a loan (the Loan) to Parent pursuant to the credit agreement. As of Date 5, the outstanding balance of the Loan is a dollars. Pursuant to the credit agreement, Parent issued b shares of Series A Preferred Stock to Trust convertible into approximately c percent of the common shares of Parent.

On Date 2, Parent issued d shares of Series B Preferred Stock and a warrant to X in exchange for e dollars. The proceeds received from the Series B Preferred Stock and the warrant were used to reduce the outstanding balance on the Loan.

On Date 3, Parent issued f shares of Series C Preferred Stock to X in exchange for the d shares of outstanding Series B Preferred Stock. Also, on Date 3, Parent issued g shares of Series D Preferred Stock and a warrant to X in exchange for X's commitment to invest up to h dollars with respect to the Series D Preferred Stock.

On Date 4, Parent and Bank executed a purchase agreement. The Proposed Transaction described below is pursuant to the purchase agreement.

Proposed Transaction

Step 1. Parent will transfer its Subsidiary1 stock to LLC in exchange for newly issued nonvoting senior preferred interests (Senior Preferred Units) and nonvoting junior preferred interests (Junior Preferred Units) in LLC. Together, the Senior Preferred Units and the Junior Preferred Units may be referred to as the Preferred Units.

Step 2. LLC will elect under §301.7701-3(c) to be treated as a corporation and will be referred to below as “LLC Corp.” Under §301.7701-3(g)(1)(iv), Parent will be deemed to transfer Subsidiary1 stock to LLC Corp. in exchange for the Common Units and the Preferred Units (the Deemed Transfer).

Step 3. Pursuant to the purchase agreement, Parent will transfer the Preferred Units to Bank in repayment of j dollars of the Loan.

Step 4. Parent and LLC Corp. will make a timely election under §338(h)(10) in respect of the Deemed Transfer of the Subsidiary1 stock to LLC Corp. in Step 2. Elections under §338(h)(10) may also be made in respect of the deemed acquisition of direct and indirect domestic subsidiaries of Subsidiary1 and elections under §338(g) may also be made in respect of the deemed acquisition of direct and indirect foreign subsidiaries of Subsidiary1.

Step 5. It is intended that Subsidiary1 will acquire all of the outstanding stock of Subsidiary2. However, it is possible that the stock of Subsidiary2 will be acquired by LLC Corp. rather than Subsidiary1.

LLC Corp.’s Junior Preferred Units Terms

The terms of the Junior Preferred Units include the following:

Ranking: The Junior Preferred Units will generally rank senior to the Common Units and junior to the Senior Preferred Units.

Term: Perpetual, or until Redemption.

Fixed Yield: Cumulative at a rate of $j\%$ per year until Date 6, and thereafter at the rate of $k\%$ per year, in each case compounded quarterly on the average daily balance of the Liquidation Preference.

Liquidation Preference: The initial liquidation preference of \$m plus any accrued Fixed Yield, minus the amount of Distributions (described below) received by the holders of the Junior Preferred Units.

Distributions: In general, except for ordinary course distributions to the Common Units of up to \$n per year (the Ordinary Course Distributions), distributions (other than liquidating distributions) will be made as follows:

- (a) First, 100% to holders of Senior Preferred Units until they have received an amount equal to the fixed yield on the Senior Preferred Units for the then current quarter;
- (b) Second, 100% to the holders of Junior Preferred Units until they have received an amount equal to the Fixed Yield for the then current quarter;
- (c) Third, 100% to the holders of Junior Preferred Units until they have received under this clause (c) an amount equal to 50% of the initial liquidation preference of \$m;
- (d) Fourth, 100% to the holders of Senior Preferred Units until they have received under this clause (d) an amount equal to their liquidation preference;
- (e) Fifth, 100% to the holders of Junior Preferred Units until they have received under this clause (e) an amount equal to the Liquidation Preference;
- (f) Sixth, 100% to the holders of Common Units until they have received, together with any Ordinary Course Distributions, an amount equal to the sum of (i) \$o and (ii) the amount of any capital contributions (other than the initial capital contribution) made by holders of the Common Units;
- (g) Seventh, 95% to the holders of the Common Units and 5% to holders of the Junior Preferred Units (such 5%, the "Participation"); and
- (h) If, in a year after holders of the Common Units have received distributions in an amount equal to the sum of (i) \$o and (ii) the amount of any capital contributions (other than the initial capital contribution) made by holders of the Common Units, distributions are made by LLC Corp., the holders of the Common Units will receive Ordinary Course Distributions prior to any distributions pursuant to clause (g), above.

Distributions will be mandatory to the extent of the net proceeds of certain events.

Liquidating Distributions: Liquidating distributions (including distributions in any transaction in which all of the Senior and Junior Preferred Units are redeemed or otherwise cancelled) will be made as follows:

- (a) First, 100% to the holders of Senior Preferred Units until they have received liquidating and non-liquidating distributions equal to the sum of the Fixed Yield on the Senior Preferred Units for the then current quarter and their liquidation preference;

- (b) Second, 100% to the holders of the Junior Preferred Units until they have received liquidating and non-liquidating distributions equal to the sum of the Fixed Yield on the Junior Preferred Units for the then current quarter and their liquidation preference;
- (c) Third, 100% to the holders of the Common Units until they have received liquidating and non-liquidating distributions equal to the sum of (i) \$0 and (ii) the amount of any capital contributions (other than the initial capital contribution) made by the holders of the Common Units; and
- (d) Fourth, 95% to the holders of the Common Units and 5% to the holders of the Junior Preferred Units.

Redemption: The holders of the Junior Preferred Units will have no right of redemption. The Participation will be redeemable in whole (but not in part) out of legally available funds, at the option of LLC Corp. after the Liquidation Preference has been reduced to zero, for the value of the Participation determined as follows:

- Following an IPO, in general the amount of the liquidating distribution that the holders of the Junior Preferred Units would receive in connection with a public offering of 100% of the equity securities in the IPO vehicle then owned by LLC Corp.
- Prior to an IPO, the amount of the liquidating distribution that holders of the Junior Preferred Units would receive in the event of a sale of 100% of the equity securities of LLC Corp., based on a good faith determination of LLC Corp.'s Board of Managers, or, if contested, by an investment banking firm of national standing designated by mutual agreement.

Transferability: The Junior Preferred Units are freely transferable.

Exchange Rights: In connection with an IPO, the Junior Preferred Units will be exchanged, or converted into, preferred stock of the IPO vehicle having the same economic rights as the Junior Preferred Units (such stock of the IPO vehicle, the Successor Stock). In addition, after an IPO, the Successor Stock will be exchangeable for, or convertible into, common stock of the IPO vehicle having a value equal to its Liquidation Preference.

Representations

The following representations have been made regarding the proposed transaction:

- (a) Except as described above, none of LLC, Subsidiary1, or any of their subsidiaries has purchased any stock of Parent, except that Subsidiary1, LLC, LLC Corp., and their subsidiaries may have purchased and may

purchase in the future an aggregate amount of up to five percent of the stock of Parent in the ordinary course of conduct of their businesses.

- (b) All of the stock of Subsidiary1 will be acquired by LLC Corp. in a single transfer by Parent in the Deemed Transfer in Step 2 of the Proposed Transaction.
- (c) Parent will be the common parent and Subsidiary1 will be a member of the Parent Consolidated Group on the date on which LLC Corp. will acquire Subsidiary1.
- (d) LLC was formed prior to the Deemed Transfer in Step 2 of the Proposed Transaction solely to effect a separation between Parent and Subsidiary1 and thereby to position Subsidiary1 as an independent operation in order to maintain the value of its business and enhance its franchise. Except for activities incident to the Proposed Transaction, LLC will not have any activities or carry on any business prior to the Deemed Transfer in Step 2 of the Proposed Transaction.
- (e) The terms of the purchase agreement have been determined pursuant to arm's length negotiations with Bank.
- (f) There is no plan or intention for LLC Corp. or Subsidiary1 to cease to remain in existence as a separate corporation.
- (g) Parent has no plan or intention to liquidate or to distribute the Common Units to its shareholders.
- (h) Parent will own less than 50% in value of the LLC Corp. stock after Step 3.

Rulings

Based solely on the information submitted and the representations set forth above, we hold as follows:

1. The Junior Preferred Units will not be stock described in §1504(a)(4).
2. The Deemed Transfer by Parent of Subsidiary1 stock to LLC Corp. in Step 2 of the Proposed Transaction will be a qualified stock purchase ("QSP") within the meaning of §338(d)(3).
3. Parent and LLC Corp. will be eligible to make the election under §338(h)(10) in respect of LLC Corp.'s acquisition of the stock of Subsidiary1 in the Deemed Transfer.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)